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JUN 22 2004
Part of
Public Record

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June 22, 2004

VIA HAND-DELIVERY

Mr. Vernon Williams, Secretary
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

JUN 23 2004

Part of
Public Record



RE: **Finance Docket 34192, Hi Tech Trans, LLC -- Petition for
Declaratory Order -- Hudson County, NJ** 211399

**Finance Docket No. 34192 (Sub-No. 1) 211400
Hi Tech Trans LLC -- Petition for Declaratory Order --
Rail Transload Facility at Oak Island Yard, Newark, NJ**

Dear Secretary Williams:

We are special counsel for the New Jersey Department of Environmental Protection ("NJDEP") and are responding to the letter dated June 17, 2004 that Hi Tech Trans, LLC filed with the Board.

As we understand it, Hi Tech is withdrawing the appeal it filed to the Board's decision served August 14, 2003 in this matter. In addition, Hi Tech alleges that it and Canadian Pacific Railway ("CP") have restructured the arrangements at the Oak Island Yard facility and that Hi Tech is now acting as CP's contractor and agent. Consequently, Hi Tech asserts, these are changed circumstances that render its appeal of the agency's decision moot.

While NJDEP has no objection to the withdrawal of its appeal, there is no evidentiary basis or reason to accept at face value Hi Tech's representations concerning any alleged change of circumstances at the Oak Island facility. As the Board will recall, Hi Tech has previously made the same argument -- i.e., that it was acting as CP's contractor and agent -- in this proceeding (see Petition of Hi Tech for Emergency Order and Other Relief, dated June 16, 2003,



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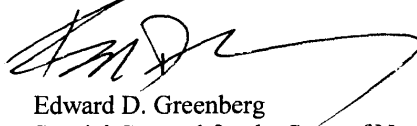
GALLAND, KHARASCH, GREENBERG, FELLMAN & SWIRSKY, P.C.

Mr. Vernon Williams, Secretary
Office of the Secretary
Surface Transportation Board
June 22, 2004
Page 2

at 4.), an assertion that was squarely rejected by the Board in the August 14, 2003 decision based upon a review of the evidence. As Hi Tech has produced no evidence to either the Board or NJDEP to support its contention, there is no basis on which either NJDEP or the Board can conclude that Hi Tech's "facility falls squarely within the parameters for Board jurisdiction [that was] explicitly outlined in the Director's decision." Moreover, despite its contention that the issues are moot, Hi Tech is attempting to further appeal the decision of the New Jersey Superior Court, Appellate Division, and has filed a Notice of Appeal with the New Jersey Supreme Court. (See attached Notices of Appeal and Petition for Certification to Appeal, dated June 16, 2004.)

NJDEP accordingly intends to continue enforcement of the cease and desist order that was initially issued against Hi Tech and its President, David Stoller, on May 28, 2003, and later affirmed by Commissioner Bradley M. Campbell of the New Jersey Department of Environmental Protection and, subsequently, the New Jersey Superior Court, Appellate Division, as discussed in NJDEP's June 14, 2004 letter to the Board. In doing so, NJDEP will seek to compel Hi Tech to comply with the provisions of statutes and regulations and seek redress for Hi Tech's continued flouting of these laws.

Respectfully submitted,



Edward D. Greenberg
Special Counsel for the State of New Jersey,
Department of Environmental Protection

EDG:kmd

cc: Honorable David M. Konschnik (via Hand Delivery)
James A. Fletcher, Esq. (via Facsimile and U.S. Mail)
Benjamin Clarke, Esq. (via Facsimile and U.S. Mail)
All other parties of record (via U.S. Mail)

SUPREME COURT OF NEW JERSEY

State of New Jersey, Department of
Environmental Protection, Solid
Waste Compliance and Enforcement,

APPELLATE DIVISION
DOCKET NOS. A-000929-03T3

Respondent,

ON APPEAL FROM:

and

OAL Docket No. ESW 05815-03

Essex County Utilities Authority
and Hudson County Improvement
Authority,

Agency Docket No.
PEA 0300001-U131

Intervenors,

Sat Below:
The Hon. Howard H. Kestin
The Hon. Mary Catherine Cuff
The Hon. Frank M. Lario, Jr.

v.

Hi Tech Trans, LLC and David
Stoller,

NOTICE OF APPEAL

Petitioners.

To:

Stephen W. Townsend
Clerk of the Supreme Court
Hughes Justice Complex
25 W. Market Street
Trenton, NJ 08625-0006

James M. Flynn
Clerk of the Appellate Division
Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625-0006

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Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, NJ 07666

James H. Martin, D.A.G.
State of New Jersey
Office of the Attorney General
Department of Law and Public
Safety, Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, NJ 08625-0112

Rebecca Hobbs, D.A.G.
State of New Jersey
Office of the Attorney General
Department of Law and Public
Safety, Division of Law
124 Halsey Street
Newark, NJ 07102

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Jun 18 2004 16:01 P.01

Fax:973-648-7156

DIV OF LAW

PLEASE TAKE NOTICE THAT pursuant to R.2:2-1, the Appellants, Hi Tech Trans, LLC and David Stoller, through their attorneys, Scarinci & Hollenbeck, LLC, 1100 Valley Brook Avenue, Lyndhurst, New Jersey 07071-0790, hereby appeal from the Appellate Division's decision and judgment of June 11, 2004, which affirmed the September 29, 2003 Final Decision of the Commissioner of the Department of Environmental Protection. Appellants are concurrently filing a separate Notice of Petition for Certification to Appeal from the same decision and judgment. Pursuant to R. 2:12-9 the following questions are intended to be raised on appeal:

1. Whether the Final Decision attempted to enforce state regulations that are, as applied to a rail transload facility, expressly preempted by Federal law;
2. Whether the NJDEP and OAL had jurisdiction to grant the relief requested;
3. Whether the NJDEP and the Oal should have heard the instant matter since it inappropriately required Commissioner Campbell to rule on the preemption of a state regulation which he has a duty to enforce against Petitioner; and
4. Whether the Surface Transportation Board decision of August 14, 2003 should be afforded any deference.

The filing fee of \$200.00 is enclosed herewith.

SCARINCI & HOLLENBECK, LLC
Attorneys for Hi Tech Trans,
LLC and David Stoller

By: 

ANDREW L. INDECK

Dated: June 16, 2004

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SUPREME COURT OF NEW JERSEY

State of New Jersey, Department of
Environmental Protection, Solid
Waste Compliance and Enforcement,

APPELLATE DIVISION
DOCKET NOS. A-000929-03T3

Respondent,

ON APPEAL FROM:

and

OAL Docket No. ESW 05815-03

Essex County Utilities Authority
and Hudson County Improvement
Authority,

Agency Docket No.
PEA 0300001-U131

Intervenors,

Sat Below:

v.

The Hon. Howard H. Kestin
The Hon. Mary Catherine Cuff
The Hon. Frank M. Lario, Jr.

Hi Tech Trans, LLC and David
Stoller,

**NOTICE OF PETITION FOR
CERTIFICATION TO APPEAL**

Petitioners.

To:

Stephen W. Townsend
Clerk of the Supreme Court
Hughes Justice Complex
25 W. Market Street
Trenton, NJ 08625-0006

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Wisler, LLP
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, NJ 07666

PLEASE TAKE NOTICE THAT pursuant to R.2:12-3, the Petitioners, Hi Tech Trans, LLC and David Stoller, through their attorneys, Scarinci & Hollenbeck, LLC, 1100 Valley Brook Avenue, Lyndhurst, New Jersey 07071-0790, shall file a Petition for Certification to Appeal from the Appellate Division's decision and judgment of June 11, 2004, which affirmed the September 29, 2003 Final Decision of the Commissioner of the Department of Environmental Protection. Petitioners are concurrently filing a separate Notice of Appeal, as of right, from the same decision and judgment. Pursuant to R. 2:12-9 the following questions are intended to be raised on appeal:

1. Whether the Final Decision attempted to enforce state regulations that are, as applied to a rail transload facility, expressly preempted by Federal law;

2. Whether the NJDEP and OAL had jurisdiction to grant the relief requested;

3. Whether the NJDEP and the Oal should have heard the instant matter since it inappropriately required Commissioner Campbell to rule on the preemption of a state regulation which he has a duty to enforce against Petitioner; and

4. Whether the Surface Transportation Board decision of August 14, 2003 should be afforded any deference.

The filing fee of \$200.00 is enclosed herewith.

SCARINCI & HOLLENBECK, LLC
Attorneys for Hi Tech Trans,
LLC and David Stoller

By: 

ANDREW L. INDECK

Dated: June 16, 2004

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